

B. Clause 18A Temporary Financial Hardship Property Tax Deferral.

1. Description of Clause 18A Tax Deferral.

Pursuant to the provisions of General of G.L. c. 59, §5, Clause 18A, Assessors may now grant to taxpayers experiencing financial difficulties a temporary tax deferral. The taxpayer may be of any age and his/her financial hardship may be based upon a number of circumstances, including active military status. Local assessors have discretion in establishing specific criteria to determine whether a taxpayer meets the requisite standard of financial hardship in much the same manner in which they establish criteria for granting a Clause 18 Hardship Exemption to sick or disabled elderly taxpayers. A Clause 18A tax deferral may be granted for a maximum period of three years, whereupon the deferred taxes must be paid. The taxpayer may pay the deferred taxes, plus interest, over a five year period in annual installments with the first payment due two years subsequent to the last year of deferral. The procedural requirements applicable to Clause 18A deferrals are similar to those applicable to Clause 41A Senior Citizen Tax Deferrals.

a) Application.

A taxpayer must file an application for a Clause 18A Tax Deferral on an approved form with the Board of Assessors for each fiscal year for which a Clause 18A Deferral is sought. (State Tax Form 99). Each annual application must be filed on or before December 15, or three months after the actual tax bill for the fiscal year is mailed, whichever is later. Assessors may not waive the statutory filing deadline, nor may they act upon an untimely application. An applicant aggrieved by the Assessors' action on any application for a Hardship Deferral may bring a civil action in the Superior Court or Supreme Judicial Court within sixty days of the Assessors' decision. To prevail with such an appeal, the applicant must show that the Assessors' decision was unlawful, arbitrary or capricious.

b) Deferral Qualifications.

- An applicant must be a natural person who owns real property as of July 1 preceding the date of application. The applicant may be the sole owner or joint owner with a spouse or others of the subject property. The property may not be owned in whole or in part by a corporation or other business entity. An applicant who holds a life estate in the property is considered an owner. If the property is held in trust, the applicant must be a trustee who also has a beneficial interest in the property.
- The applicant must occupy the property as his or her domicile on July 1 and must have been domiciled in Massachusetts for the preceding ten years. The ten years must be consecutive, but the taxpayer need not have lived all of those years in the same location in Massachusetts.
- The applicant must demonstrate a financial hardship, i.e., that he/she currently lacks the financial resources to pay real estate

taxes because of a change to active military status (not including an initial enlistment), unemployment, illness or other reason, as determined by the Assessors. Assessors may consider various factors in determining whether a taxpayer meets the statutory standard of financial hardship and may request relevant financial records and/or documents to assist with their evaluation of an application. The following factors are typically prime indicators as to an applicant's financial status:

- (1) Financial resources, including all income of the applicant, the applicant's spouse, other adult household members and any co-owners of the subject property, savings, investments and other assets of the applicant, applicant's spouse, other household members and any co-owners, military or employment status of the applicant and applicant's spouse, unemployment circumstances, the ability of the applicant and applicant's spouse to obtain gainful employment, illness or disability of the applicant, applicant's spouse, family members or other dependents.
- (2) Supporting documentation may include federal and state income tax returns, savings and checking account statements, social security and pension fund statements, public assistance records, schedules of assets and outstanding bills.

2. Clause 18A Deferral Process.

a) Deferral Amount.

Assessors may grant a Clause 18A deferral of all, or part, of the tax in any year with the following limitations:

- The annual deferral of an applicant who owns property jointly with someone other than a spouse is limited to a deferral of the same percentage of the tax as the applicant's ownership interest.
- The total deferral account, including interest, is limited to fifty percent of the applicant's proportionate share of the full and fair cash value of the property.

b) Deferral and Recovery Agreement.

In the first year a Clause 18A Deferral is granted, a taxpayer must enter into a Tax Deferral and Recovery Agreement with the Assessors. (State Tax Form 99-1). All co-owners and mortgagees must also sign the agreement in order for it to be effective. This same Agreement will also cover taxes for the next two fiscal years if the taxpayer applies and qualifies for a deferral in either or both of those years.

c) Deferral Statement.

The Assessors must record a Statement (State Tax Form 99-2) that they entered into a Clause 18A Recovery and Deferral Agreement at the Registry of Deeds. This recorded Statement constitutes a lien on the property to secure repayment of the deferred taxes and any accrued interest. This lien has priority over any prior or subsequent encumbrances on the property, except a recorded reversed mortgage that is not a shared appreciation instrument.

d) Deferral Notices.

The Assessors must issue a deferral Certificate to the taxpayer (State Tax Form 99-3) and notify the collector and accounting officer of the amount deferred for each year a Clause 18A Deferral is granted. In the first year, the Assessors should also notify the Collector and Treasurer of the amount of the fee paid to record the Deferral Statement and provide them with a copy of said Statement and the Deferral and Recovery Agreement.

3. Collection Procedures.

Taxes deferred under Clause 18A are accounted for in the same manner as taxes deferred under Clause 41A, i.e., they are treated as if they were a tax title account. In the first year the Clause 18A Deferral is granted, the Treasurer must create a modified tax title account for the parcel in the amount of the deferred taxes. The amount of the fee paid to record the Assessors' Statement of Entry into a deferral and recovery agreement is added to those taxes. Deferral accounts should be maintained on regular tax title account forms and be prominently noted that they secure taxes deferred under Clause 18A. Clause 18A deferral accounts (like Clause 41A accounts) should be segregated from ordinary tax title accounts, since the liens are not ripe for foreclosure until the transfer of the property or death of the deferring taxpayer. If the subject property is already in tax title as of the effective date of the tax deferral, the Treasurer should add the deferred taxes to the tax title account, but make the modifications noted herein for the years for which the taxes are deferred.

a) Subsequent Year Taxes.

If the Assessors grant a deferral for either or both of the next two fiscal years, the Collector must certify the deferred taxes for those years to the account in the same manner as subsequent years' taxes are certified to an ordinary tax title account. No collector's interest is included in the amount certified. If, subsequent to a tax deferral, taxes assessed for any other year (i.e., subsequent to next two fiscal years after deferral) are not paid in full, the collector should issue a demand pursuant to G.L. c.60, §16. If these taxes remain unpaid, the collector should then certify the taxes to the deferral account with collector's interest and the demand fee.

b) Interest.

Unless the taxpayer qualifies for relief under the Federal Soldiers and Sailors Relief Act (50 U.S.C. App. 560), in which case interest charged on taxes owed by taxpayers on active military duty is limited to 6% per annum, the following interest rates will apply:

- Interest on deferred taxes accrues at 8% per annum or such lesser rate as may be determined by the legislative body of the city or town. If the property is transferred or the taxpayer dies before the account is paid, however, interest will, as of the triggering event, accrue at 16% per annum pursuant to G.L. c. 60, §62.
- The 8% interest rate (or such lesser rate) is calculated from the dates interest accrues on unpaid taxes under the payment system implemented by the community for that fiscal year. (e.g., if a semiannual tax payment system is utilized, from October 1 or the date of mailing of the actual tax bills whichever is later and April 1; and in a community which uses a quarterly payment system, from the due dates of all preliminary and the actual tax payments).
- If a taxpayer pays any of a given fiscal year's tax before a deferral for that year is granted, the Collector should issue a refund of the taxes paid, with no interest, and interest on deferred taxes should be calculated from the date of the refund to the taxpayer.
- The Collector's certification to the Treasurer should include all relevant dates to enable the Treasurer to calculate the interest accrued on account of deferred taxes.

c) Payment.

At the end of the Clause 18A Deferral, the taxpayer becomes liable for payment of all deferred taxes and statutory interest accrued thereon. A taxpayer may pay the amount deferred in five annual installments. The first installment is due two years from the end of the last fiscal year for which the deferral is granted. Each installment shall be in the amount of one-fifth of the principal, i.e., the total taxes deferred, plus accrued interest on the unpaid balance. In the first year, interest is calculated from the date interest accrues on unpaid taxes under the payment system the community used for that fiscal year until the June 30 installment due date. In subsequent years' interest on the unpaid balance runs from June 30 to June 30. The Treasurer should send a notice or statement to the taxpayer by June 1 of each year in which an installment is due. In the first year, the statement should show the total taxes deferred, accrued interest on the deferred taxes and the amount of the installment payment due by June 30 of that year. In subsequent years, it should show previous payments made, the unpaid balance and the principal and interest due for that year. A taxpayer may pay the tax deferral, in full, at any time in order to clear title on the property. Interest on the deferred taxes is calculated from the dates interest accrues on the unpaid taxes until the payoff date. If prior installment payments had been made, interest on the unpaid balance should be calculated from June 30 of the year in which the last installment payment was made.

Once a deferred tax amount is paid in full, the Treasurer must execute a renunciation of the municipality's lien on the property (State Tax Form 97-4) and record this document at the Registry of Deeds.

d) Surviving Spouse.

If a taxpayer dies, his or her surviving spouse may continue the deferral for any of the years remaining within the three years covered by the deferral so long as the spouse applies and qualifies for the deferral in those years and enters into a new deferral agreement. Any taxes deferred under the new agreement with the spouse, together with interest, will be added to the amount already deferred so long as the fifty percent limit has not been reached.

e) Collection and Foreclosure.

The Treasurer must calculate the amount due from a taxpayer, or the taxpayer's estate, if there is a conveyance of the property, or if the surviving spouse does not continue the deferral upon death of the taxpayer. After the death of a taxpayer or the sale of the property, the tax title interest rate of 16% shall apply to the outstanding deferred taxes. If said deferred taxes and accrued interest not paid within six months after the death of the taxpayer or sale of the property, the Treasurer may commence tax foreclosure proceedings in the Land Court.